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Articles

Legal aspects about urbanization of the Argentine frontier: the case of the Policía de Radicación

Aspectos legales sobre la urbanización de la frontera argentina: el caso de la Policía de Radicación

Gabriel Alejandro Preci^{a*}  <https://orcid.org/0000-0002-2939-8791>^a Pontificia Universidad Católica Argentina, Ciudad Autónoma de Buenos Aires, Argentina, e-mail: gabrielpreci@gmail.com

Abstract

The present work aims to analyze the scope of the figure of the Policía de Radicación in Argentina's "zonas de seguridad de fronteras". By means of a chronological review, we will describe basic aspects of its legal regulation, especially those related to the progressive exclusions of its application in different urban centers. Its consecration in 1944 was based on a strict application of the doctrine of national defense, promoting the acquisition of real estate in favor of native Argentines at the expense of foreigners from neighboring countries. We intend to show/present from a legal perspective how the evolution and mitigation of this police control over real estate on the Argentine frontier is related to the dynamic nature of the latter. Scattered norms that gradually recognized the dimensions of sustainable development and integration in the Argentine periphery, influenced the gradual blurring of the mission and functions of the Police of Radication in different urban centers.

Keywords: Policía de Radicación, Argentine frontier, development frontier, integration frontier.

Resumen

El presente trabajo pretende analizar los alcances de la figura de la Policía de Radicación en las "zonas de seguridad de fronteras" de Argentina. Mediante una reseña cronológica describiremos aspectos básicos de su regulación legal, especialmente los vinculados con las progresivas exclusiones de su aplicación en distintos centros urbanos. Su consagración en 1944 estaba fundamentada en una estricta aplicación de la doctrina de la defensa nacional, que propiciaba las adquisiciones de inmuebles a favor de argentinos nativos en desmedro de extranjeros oriundos de países limítrofes. Pretendemos exponer desde una óptica jurídica cómo la evolución y morigeración de este control policial sobre

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*Corresponding author: Gabriel Alejandro Preci. E-mail: gabrielpreci@gmail.com



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inmuebles de la frontera argentina se encuentra relacionada con el carácter dinámico de esta última. Las dispersas normativas que fueron reconociendo las dimensiones del desarrollo sustentable e integración en la periferia argentina, influyeron en desvirtuar gradualmente sus misiones y funciones en distintos centros urbanos.

Palabras clave: Policía de Radicación, frontera argentina, frontera de desarrollo, frontera de integración.

Introduction

During most of the 20th century, a geopolitical context of border differences prevailed among the different countries of South America. This context was based on divergences over the demarcation of their respective territorial borders. That demarcation was a product of the independence processes that took place in the continent throughout the 19th century, which generated the emergence of incipient States whose territorial jurisdiction in many cases was not precisely determined. Mutual distrust and the hypotheses of threats to territorial integrity led to the development of specific policies by the state units of the South American region, which implemented particular regulations in their respective frontier areas.

As a result of this geopolitical context of mutual distrust between States in the region, since 1944, the National Commission of Security Zones (Spanish: *Comisión Nacional de Zonas de Seguridad*, CNZS) has been exercising, in different sectors of the frontiers of Argentina, a power of control and authorization in the possession or tenure of real estate, called "Policía de Radicación". This power of the National State was conceived to favor the settlement of native Argentine citizens at the frontier, to the detriment of the foreigners coming from the bordering countries. Its enshrinement into law took place within the theoretical framework of the postulates of the doctrine of national defense (a doctrine whose application at the frontiers was a common denominator in the States of the region) and in the context of a strict governmental vision of hypotheses of conflicts with the state units adjacent to its periphery.

The dynamic, multifunctional, and inter-ministerial character of the legal concept of the Argentine frontier, currently based on the variables of providing for the protection of its security, integration, and sustainable development, contributed to the progressive limitation of this frontier police control over time. This limitation was most significant in 1995, excluding an essential group of urban centers located on the periphery of Argentine territory.

Similarly, the degree of evolution of the Policía de Radicación was not alien to the different government views on the frontier. This work reflects on the trend of exclusions and exceptions, including whether the evolution of this concept will continue to be accentuated or restricted against the criterion of increasing controls because of various factors such as transnational organized crime, illegal immigration, or diseases like the current COVID-19 pandemic. These factors produce a decrease in border permeability.

Similarly, this article will review the regulatory history of this power of real estate police control, conceived as part of a territorial policy of “national convenience” within the strict framework of implementing national defense doctrine.

The study of this administrative responsibility of the State will complement the successive legal regulations on different aspects of development and integration at the frontiers. It is hardly possible to ignore the conception and regulatory evolution of the latter, given their dynamic, historical, and multifunctional character. As previously pointed out, this characteristic undoubtedly contributed to the evolution of the control of the Policía de Radicación.

Therefore, for this research, it is necessary to start from a definition of the frontier that includes all the elements generally accepted in the Argentine legal system. In this sense, this work adheres to the criterion proposed by Balmaceda (1979, p. 23). Balmaceda points out that the frontier is the strip of territory of variable width contiguous to the international boundary, which constitutes the epidermis of the State as it accompanies the entire periphery of its territory, bringing it into contact with neighboring countries and their geographical realities.¹

Furthermore, this article highlights that the current legal concept of the Argentine international frontier, based on the variables of its integration, security, and sustainable development, is the product of an extensive and widely known legal history. This history did not emerge with the enactment of a law by the National Congress per section 15, article 67 of the 1853 Constitution, but with a *de facto* decree issued at the end of the Second World War, at which time the text of the anachronistic constitutional clause was in force (in a formal but not material way). This text associated the concept of the frontier as internal and with the indigenous people who lived in the desert.²

The Concept of the “Internal” Frontier in the Argentine Constitution

The constitutional roots of the “reinterpreted” concept of the frontier on which the Policía de Radicación was based were not associated in the 19th century with the territorial confines of the Argentine Republic, but with the precariousness and significant extension of the jurisdiction of the government over large portions of the territory known as the “desert”,³ where different nomadic tribes and native peoples lived.

¹ Due to the mutability and historical, political, economic, and social conditioning of the different frontiers in the world there is no framework of homogeneity in the definitions of these borders in comparative law. Bearing in mind the evolution of the legal history of the Argentine frontier, it is understood that this Argentine geographer has produced one of the best definitions on the subject.

² Paragraph 15 of Article 64 of the National Constitution of 1853 (renumbered as Article 67 in the constitutional reform of 1860) established as a responsibility of the National Congress: “To provide for the security of the frontiers; to preserve the peaceful treatment of the indigenous people, and to promote their conversion to Catholicism”.

³ The expression “desert” from colonial times to the end of the 19th century was applied to large extensions of territory as a synonym for uninhabited space. After the emancipation processes, the territory where this “desert” was located was considered to be inherited from the Spanish crown based on the principle of *uti possidetis*, aspiring to exercise an effective governmental dominion over it.

The legislative testimonies of 1853, such as the facsimile texts of the minutes of the constituent assemblies compiled by Ravignani (1937, p. 529), provide an idea of the frontier that is entirely alien to the current definitions associated with its international boundaries, which were intended, in turn, to provide an adequate response to concrete governmental realities. It is possible to define this primitive concept of the frontier as an ephemeral, mobile, diffuse, and unstable jurisdictional boundary, which materialized through the theoretical design of military planning or mapping whose landmarks were identified in a precarious and bureaucratic line of defensive posts known as “forts” (Spanish: *fortines*). According to the conclusions of the historical reconstruction of Thill and Puigdomenech (2003, p. 19), the time frame of the location of these precarious defensive “pillars” extended from 1536 until shortly after the desert campaign initiated in 1879.

On this jurisdictional boundary in permanent and incipient movement, multiple political, economic, social, military, and cultural relations arose between the inhabitants of two worlds whose demarcation, struggles, and alliances are still controversial. Documentary testimonies abound, such as what Durán (2006, p. 543) named the “border notaries” of Salinas Grandes,⁴ which gives an account of this “frontier space”. According to Lucaioli (2010, p. 8), this frontier space was a permeable zone in constant territorial and population relocation where communication and peaceful or hostile exchange through cultural, social, political, and economic crossbreeding processes were common.

In the 19th century, following the constitutional directive of 1853, the legislative activity of the National Congress to provide for the security of the frontier, supported by the regulatory acts of the Executive Branch, aimed to protect it in a context of constant distractions due to internal and external events, without renouncing the aspirations of the government to mobilize these “internal milestones” toward the periphery of the territory over which it aspired to exercise the right to geographical unity and territorial integrity.

The point of most significant tension in applying the law on the internal frontier with the inhabitants that the constitutional text incorrectly called “Indians” occurred within the framework of the sanctioning of Law 947⁵ of 1878. In that text, the order was to apply the delayed Law 215 of the year 1867, which ordered the military occupation of the Neuquén River bank from its origin in the Andes to its confluence in the Negro River toward the Atlantic.⁶

There is no doubt that around 1878, the Argentine government structure urgently needed to expand its markets locally and internationally and contain the territorial aspirations of neighboring countries. Similarly, it was necessary to end a longstanding conflict as the State exercised its right to the definitive formation and geographical unity of its territory (of which there was a lack of detailed topographical surveys in many of its sectors). However, such aspirations could not omit the tragic consequences

⁴ These documents attest to the repeated diplomatic and commercial activity between the native villages and the government. Much of it can be consulted in the Estanislao S. Zeballos Archive of the “Enrique Udaondo” Provincial Museum Complex in the city of Luján, Province of Buenos Aires.

⁵ National Registry of the Argentine Republic (R.N.) (1896). *Volume Eight. 1878 to 1881* (p. 57-58). Typographic Workshop of the National Penitentiary.

⁶ This law envisioned granting nomadic tribes, which were in the territory between the current line of (internal) frontiers and the new one to be reached in the Black River, everything necessary for their peaceful existence. Otherwise, it ordered the organization of a military expedition against them in order to expel them south of the rivers that were to be occupied by the military.

of the final stage of the war of internal frontiers —known as “the conquest of the desert”— between the nomadic or aboriginal populations, which had to face situations in many cases close to slavery.⁷

The Frontier as a Security Zone

It is generally considered that the conclusion of the desert campaign at the end of 1884 marked the end of the internal frontiers of the Argentine State.⁸ However, although the constitutional concept of the frontier was beginning to mutate to a meaning related to international boundaries, the consolidation of the territories that were formerly identified as “the southern frontier” inevitably led to the creation of another type of “deserts” with a low population density: the National Territories of Law 1532 (October 10, 1884) in which the governorships of La Pampa, Neuquén, Río Negro, Chubut, Santa Cruz, Tierra del Fuego, Misiones, Formosa, and Chaco were created. These governorships were the predecessors of future Argentine provinces after their inhabitants had gone through a sort of “civic and moral learning” stage without the capacity or power of self-government,⁹ and in which (except for the province of La Pampa) the institution of the Policía de Radicación was in time set up in its international frontiers and limits adjacent to the maritime coast.

Due to its magnitude, the State’s questionable policy to distribute the lands where the indigenous peoples formerly governed will not be reviewed or described here. For this article, it is sufficient to point out that, given the depopulation of these lands, their international and coastal borders were governed at the end of the 19th century and the first half of the 20th century by regulations regarding their state reserves, agricultural activity, and colonization policies that brought with them the creation of towns, and the sale and allocation of state lands.

In 1944, after Decree 9221/1944 was briefly in force,¹⁰ Argentina no longer regulated its frontiers (understood from the end of the desert campaign as international) exclusively from a fiscal and colonizing perspective. It adopted a view according to the postulates

⁷ These consequences ranged from the breakdown of family ties, deaths due to illness during brutal transfers by land or in overcrowded boats, confinement, and extreme situations of servitude in the north of the country, to unjustified delays in the delivery of promised lands to the subjugated tribes, a situation that was only alleviated in 1994 with a late constitutional reparation which is currently being questioned in many of its aspects.

⁸ In that year President Roca informed the National Congress in its opening session: “Our military cantonments in the south are located at the foot of the Andes, which are at last our current and definitive line of frontiers”. In fact, the last internal Argentine frontier remained in the territory of the “impenetrable Chaco” until 1911: that of the Bermejo River. Only with the occupation of the Pilcomayo River in 1911 did the planning and abstract geographical projection of Argentina coincide with the concrete extension of the exercise of its sovereignty.

⁹ Moroni (2007, p. 76) points out that from 1884 onwards reality showed that only a narrow strip of land to the east of the province of Buenos Aires (now the province of La Pampa) corresponded to the characteristics of fertility proclaimed by the promoters of expanding agricultural and livestock activity in the desert, with 90% of the population being concentrated in this fertile sector.

¹⁰ This decree issued on April 13, 1944 concerning the custody of the maritime frontiers by the National State, was briefly in force for two months, to be replaced by Decree 15385/1944.

of the doctrine of national defense. Molina (1926, p. 17) summarized the latter as that in which a State contemplates different contingency plans in the event of invasions by neighboring countries across “all its frontiers, taking into account the different eventualities that could arise from conflicts with neighboring countries”. Even Joaquín V. González (1897, p. 486), in his *Manual para los establecimientos de instrucción secundaria* (*Manual for Secondary Education Establishments*) of 1897, understood that having fulfilled the constitutional directive on the frontier with the indigenous people, “its internal application disappears, only to become a permanent duty to watch over the security of the international frontiers, which must be fulfilled by keeping the army stationed throughout them, and building fortresses, and the necessary defensive works”.

During the de facto government of the 1943 coup d'état, the decree that materialized this military conception of the frontier was number 15385/1944 on the creation of “security zones destined to complement the territorial provisions of the National Defense”,¹¹ whose first article ordered to:

Create “security zones” throughout the Nation’s territory, designed to complement the territorial provisions of national defense, which will include a strip along the land and sea frontier and a belt around those military or civilian establishments in the interior that are of particular interest to the defense of the country.

The areas located on the frontiers will be called “frontier security zones”, and those in the interior will be called “interior security zones”.¹²

Thus, the Argentine frontiers were determined by a width of territory starting from the national frontier or limit whose measurements could not exceed the maximum of 150 kilometers at the land frontier and 50 kilometers at the sea frontier.¹³

The regulation of this decree was made in its pair number 14587/1946 (Official Gazette of 05/31/1946, p. 2.) based on the requirement of a previous analysis of the characteristics of the population, resources, or situation of the region. In this way, a line was established as a provisional limit of the frontier Security Zones (Spanish: *Zonas de Seguridad de Fronteras*, ZSF) that would run 100 kilometers in the security zone of the western frontier (from the northern and western international limits of the provinces of Salta and Jujuy, west of those of Catamarca, La Rioja, San Juan, and Mendoza, and the national territories of Neuquén, Río Negro, and Chubut, and west and south of that of Santa Cruz); 50 kilometers in the northern and northeastern frontier security zone (from the international limit of the national territories of Formosa, Chaco and Misiones, and the provinces of Corrientes and Entre Ríos) and 25 kilometers in the

¹¹ Official Gazette (Spanish: *Boletín Oficial*, B.O.) of 04/25/1945. The decree was issued on June 13 of the previous year. This de facto regulation (currently in force) was legally ratified by the National Congress in 1946 by Law 12913, together with a voluminous list of reserved decrees regarding matters of security and national defense.

¹² Although the frontier was presented in the regulation as a subcategory of the security zone, from its “recitals” it emerges that this subcategory is in fact the core concept and main category of the regulation, as it was pointed out in its foundations that Argentina did not have a law that takes into account completely the need to provide for the security of its frontier areas.

¹³ It has been pointed out in a previous research work (Preci, 2019, p. 136) that it is important to understand the “maritime frontier” as the national borders of the consolidated territory, and not as the bordering sea, over which Argentina exercises sovereignty in different degrees depending on whether it is the territorial sea, the contiguous zone, or the exclusive economic zone.

maritime frontier security zone (from the coast of the Río de la Plata and the Atlantic Ocean in the province of Buenos Aires and the national territories of Río Negro, Chubut, and Santa Cruz).

At first glance, it is possible to see a more significant extension of kilometers established in the security zone of the western frontier, which was preserved throughout the twentieth century. This geographical delimitation was due to the resolved diplomatic tensions that Argentina had at different times with Chile, with which it shares one of the longest borders in South America.

The Creation of the Policía de Radicación

It should be noted that in the last half of 1944, the Second World War entered its final phase. This was a conflict that, according to Ancel (1984, p. 115), originated in different conceptions of “human borders” based on “barriers” of the peoples based on thoughts and desires for separation, rather than on fixed borders. In this geopolitical context, the Argentine government had a view of its unpopulated frontiers, which was limited to the consolidation of national defense doctrine. In this regard, Article 4 of Decree 15385/1944 states:

It is declared national interest that the assets located in the security zones belong to Argentine native citizens.

The Executive Branch may declare of public utility and expropriate the assets it considers necessary and dictate rules in the future concerning the same, on the National Defense Council's orders. Likewise, it may demand that the sale, transfer, or lease of the assets located in certain frontier security zones not be carried out without first obtaining the consent of the National Commission of Security Zones concerning the person of the purchaser or lessee.

This fourth article was the starting point for the function of real estate control of the Policía de Radicación, which would operate under the direction of the CNZS, which was created in the fifth article. The mission of the latter was precisely to permanently watch over the interests of national defense in the ZSF. Its activities were regulated by the National Defense Council and for administrative purposes by the Ministry of War.

The legal regulation of this bureaucratic border settlement control was extended in 1948 with the issuance of Decree 32530/1948 (Official Gazette of 10/25/1948, p. 1), which established in its first article regarding the “frontier notaries”:

For the previous authorization referred to in Article 4 of Decree 15.385 (law 12. 913), the officials involved in any activity that involves the transfer of ownership, lease, or any form of constitution of real or personal rights under which the possession of the real estate in the security zone must be handed over, shall take into account the agreement that all inhabitants be native Argentines, with no unfavorable background or naturalized Argentines, with proven roots in the country or, exceptionally, foreigners of recognized morality, whose settlement in the lands they occupy may be considered as

definitive, with an Argentine family (Argentine wife or Argentine children) or in order to establish themselves with companies or industries of importance for the country's economy; except for foreigners from the country bordering the area of the land of which they are applying for possession or tenure.

At the same time, the second article ordered that any notary public who had to deed any transfer or lease of real estate within the ZSF would be obliged to request the authorization referred to in the fourth article of Decree 15385/1944 and to expressly record at the end of the deed that the transfer or lease was carried out with the prior authorization of the CNZS.

The recommendation to the officers of the Policía de Radicación to abstain from authorizing transfers of ownership in favor of foreigners from neighboring states is the result of an international frontier that was conceived with a rigid character, limited to the separation of sovereignties, and typical of the post-war and cold war context. In this geopolitical scenario, the Argentine leadership was influenced by the hypothesis of possible settlements and the imperceptible influx of many foreigners from neighboring countries. It was feared that these possible settlements would lead to significant populations that could soon lead to self-determination claims, with the consequent annexation of portions of territories adjacent to the international periphery.

It should be noted that this legal strategy of separating not only sovereignties but also populations reflects a policy and line of thought that could hardly ignore or hide one of the essential characteristics of the Argentine frontier: its permanent porosity in mediating populations on both sides of the international boundary that are permanently interacting.

This porosity or permeability of a large part of Argentina's frontiers forms a conglomerate of sensitive areas that absorb the influences of the geographical realities located on the other side of the international boundary. In the case of Argentina, since the middle of the 20th century, specific sectors of its international frontiers have intensified, which even today continue to be sensitive areas of mutation or change, where the specific characteristics of the country of origin such as its language, food, clothing, native music, and cultural processes, in general, have been subjected to the constant influences of the imprint of the neighboring country. At the time of the regulation of the ZSF, such influences expanded directly (contacts between people) indirectly (traditional media such as radio and later television).

This permeability, typical of a large part of Argentina's frontiers, can be seen in the teachers who work in schools in the frontier areas. In many cases, they have to teach in another language or dialect to be understood, as is the case with Portuguese or Guaraní in the triple frontier of Argentina, Brazil, and Paraguay known as the *trifinio*. The border permeability can also be seen in the constant relations between the indigenous Guaraní communities that reside on Bolivia and Argentina's borders.¹⁴

However, this natural and ascending scenario of cultural and migratory permeability on the international periphery—given the geopolitical context that reigned from the middle of the 20th century—was considered negative by the National State. The latter considered that the lack of adequate police control of the transfer of properties within

¹⁴ According to Hirsch (2000, p. 279) the indigenous Guaraní communities in Bolivia refer to the Argentine region as Mbaporenda (the place where there is work) and the Argentine communities refer to their peers on the other side of the frontier as Ñandetararêta (our family); they do not regard the frontier as an obstacle but as a point of convergence.

its frontiers could bring about an eventual scenario of incipient and subtle “invasion” of foreign citizens from neighboring countries in areas with tensions and disputes over territorial demarcation. Such a scenario was considered imminent if foreigners from bordering countries could freely acquire property or establish any industry and bring their original customs to certain Argentine urban centers that presented a jurisdictional weakness due to their low population density. Moreover, there was a lack of economic development in many frontier areas, in contrast to the concentration of population in the humid pampas of Argentina and the internal migration to large coastal cities. These circumstances presented the police control of frontier settlement as an ideal legal complement to consolidate the doctrine of national defense on the periphery of the territory.

In the same line, authors such as Guglielmelli (1979, p. 44) warned that, when demographic pressure, necessity, or merely an expansionist policy occur in the neighboring country, the “absence or weakness of one of the parties leads irremediably to the preponderance of the other”. Similarly, in 1951, on the occasion of the parliamentary debates on Law 14027 on unauthorized border crossings, the reference to the intense and permanent “transit of persons suspected of subversive or illegal acts in the frontier areas” speaks for itself of the government policy on these frontier territories where the Policía de Radicación Inmobiliaria (Real Estate Settlement Police) was established. Frontier territories that, as deputy Pastor pointed out—during the debates for the sanctioning of the law cited above—were considered “inhospitable areas, not inhabited by the owners, who always seek a more hospitable and agreeable environment”.¹⁵

Sustainable Development in the ZSF

Both the original concept of the Argentine frontier—understood as the border between the territory under the jurisdiction of the State and the desert—and that of the international frontier framed in the body of the ZSF shared (and currently share in many regions) a jurisdictional weakness of the effective presence of the State, previously associated with precariousness and now with the concept of underdevelopment. Similarly, Alsina (1977) promoted in 1875 his so-called “integrationist policy with the Indians”, ordering that towns aspiring to prosperity should be founded next to the forts (Spanish: *fortines*).¹⁶ Around 1970 it began to be seen in different sectors of Argentine society that security and frontier development concepts were closely related as two sides of the same coin.

¹⁵ According to the Record of Sessions of the Chamber of Deputies of the National Congress of 1951, volume 1, p. 275, this law provided that the owners or occupants of the properties bordering the frontiers must allow the Federal Police, National Gendarmerie, Maritime Sub-Prefecture, or the authorities determined by the CNZS, free access to the international communication points existing in their respective properties, as well as the free movement of such authorities along the frontier.

¹⁶ This policy of Alsina was materialized with the sanctioning of Law 752 (National Registry, 1895, volume seven, 1874/77. National Penitentiary Typography Workshop).

The first regulation that was innovative in contemplating the required variable of sustainable development in the legal concept of the Argentine frontier was Law 18575.¹⁷ Despite being a law dictated by a de facto government, that is to say, sanctioned without the intervention of the National Congress, it enshrined concepts on provisions tending to promote sustainable development in specific sectors of the zsf. Although subordinated to their security variable, these differentiated sectors became known as the “Frontier Zone for Development” (Spanish: *Zona de Frontera para el Desarrollo*, ZFD).

Among the general objectives indicated in the second article of this law were the creation of suitable conditions for the settling of inhabitants on the frontier; the improvement of their infrastructure, and the exploitation of natural resources; the integration of the periphery to the rest of the Nation and the encouragement of the strengthening of spiritual, cultural, and economic ties between the populations of the area and those of the bordering countries. This last guideline regarding the strengthening of transnational links mitigated the old policies aimed at avoiding what was considered “cultural influence” from neighboring countries, which the Policía de Radicación was an essential component to prevent by bureaucratic means.

Article 6 of Law 18575 ordered that sufficient incentives be provided for the population to settle and take root; economic and financial support for the population; special credit, tax, and tariff regimes aimed at installing industries or expanding the existing ones; easy access to land and home; and any kind of measure that would tend to achieve the stated objectives. To this end, it was established that within the ZFD, there would be expressly determined “frontier areas”, which, due to their situation and unique characteristics, would require priority promotion for their development. To this end, the Executive Branch was empowered to determine the respective frontier zones and areas and modify and terminate the regime once the projected objectives were achieved.

Concerning the human factor, although Law 18575 in its article 8 established that the settlement of “native Argentine inhabitants, or naturalized Argentine and foreigners with proven roots in the country and of recognized morality” should be encouraged, police control of frontier settlement continued to function under the military ethos of the CNZS. Consequently, the competent officials who exercised the real estate control of Article 4 of Decree 15385/1944 continued to do so to the detriment of the requests of foreigners who were natives of the country bordering the area where the possession or tenure of the property was requested.

After enacting Law 18575, multiple regulations were issued over ten years, deepening the variable of development on the frontier. One of the most notable is the Reserved Decree 2563/1979, through which the National Superintendence of Frontiers was created (Spanish: *Superintendencia Nacional de Fronteras*, SNF).

This last “reserved” regulation established in its article 2 that the National Superintendent of Frontiers would be the natural president of the CNZS exercising his functions.¹⁸ The “reserved character” of the law speaks for itself of the governmental view of the frontier strictly subordinated to the doctrine of national defense, to such an extent

¹⁷ This regulation (currently in force) was “discussed”, sanctioned, and promulgated on January 30, 1970 by the de facto President General Juan Carlos Onganía “in use of the powers conferred by Article 5 of the Statute of the Argentine Revolution” (Official Gazette of 02/03/1979, p. 2).

¹⁸ The foundation of the regulation was that it was believed convenient to centralize in an organic entity the development of the different functions that the Ministry of Defense carried out concerning the frontiers.

that this decree was only published in the Official Gazette in 2013, almost forty-four years after it was issued (Official Gazette of 04/29/2013. Special Supplement, p. 75).

The *Policía de Radicación* in the Security and Development Areas

In 1982 the variables of security control and sustainable development on the Argentine frontiers were legally unified in the same territorial space through Decree 193/1982 (Official Gazette of 02/01/1982, pp. 2-3). The enactment of this regulation provided for the first time the unification of the geographical limits of the ZSF of Decree 15385/1944 with those established in the ZFD of Law 18575, thus forming a uniform territorial surface that was renamed “Frontier Zone”. As a result of this territorial frontier unification, the regulation produced a kind of adjustment in the scope of the *Policía de Radicación*, whose jurisdiction was being undermined in some geographical regions of the frontier. To this end, article 4 established: “The National Superintendence of Frontiers is empowered to take control from—in the performance of the *Policía de Radicación*— the urban areas included in the new unified zone of frontier, that it considers convenient”.

Nevertheless, the view of the frontier in the framework of implementing the strict doctrine of national defense still predominated. This doctrine was understood as a set of measures that the State should adopt to achieve national security since it considered the latter to be the situation in which the Nation’s vital interests were shielded from substantial interference and disruption (García, 1975, p. 4).

The year after Decree 193/1982, democratic elections were held in Argentina, bringing the National Constitution back into full force. Unfortunately, Decree 1182/1987 (Official Gazette of 09/28/1987, pp. 2-3), issued during the presidency of Raúl Ricardo Alfonsín, led to the repeal of Decree 193/1982. While recognizing in its recitals the importance of the variables of sustainable development, the new regulation incorrectly understood that it was appropriate to establish separately the territorial scopes of Decree 15385/1944 and Law 18575 and redefined the geographical contour of the ZSF and the ZFD differently.

Despite the unfortunate frontier policy of differentiating the areas of security and sustainable development, Decree 1182/1987 expressly ratified the prerogative of Article 4 of Decree 193/1982, which allowed for the exclusion of specific urban centers from the *Policía de Radicación*. Concerning these urban centers located in frontier areas, the law in its cartographic annexes provided that the “municipal ejido of Corrientes” was excluded as a ZSF.

One year after the issuance of Decree 1182/1987, the National Congress passed Law 23554 on National Defense. Its article 42 modified the text of article 4 of Decree 15385/1944, which was drafted as follows:

It is declared of national interest that the assets located in the security zones belong to Argentine native citizens. The National Commission of Security Zones will operate the *policía de radicación* in said zone regarding the transfer of ownership, lease or rent, or any form of real or personal rights, by which the

possession of real estate must be transferred, the effect of which will accord or deny the corresponding authorizations (Official Gazette of 05/05/1988).

From the amended text, it appears that, unlike the original Article 4 of Decree 15385/1944, express mention is made of the power of real estate controller in the zsf: “policía de radicación”, eliminating the reference to the expropriation power of the Executive Branch concerning property located in frontier areas. In turn, the amended text makes express reference to the control of “any form of real or personal rights”, the wording of which achieves greater precision and legal technicality. It is understood that such an amendment is not minor since the purchase and sale of real estate in frontier areas is linked in the Argentine legal system with different matters of law. Among the latter, Iñiguez (2004, pp. 155-156) identifies the law of contracts, rights in rem, legal acts and facts, administrative law, corporate law, and private international law, among others, with rules that, although partially modified, according to the author have been overshadowed by a national defense purpose.

Once again, and in a regulatory turn of one hundred and eighty degrees, Decree 887/1994 (Official Gazette of 06/10/1994, pp. 3-15) was issued in 1994, through which the limits of the zsf of Decree 15385/1944 were again unified with those of the zfd of Law 18575. The recitals of this decree, issued during the interregnum in which the constituent assembly members were deliberating the text of the imminent reform of the National Constitution of 1853, referred to the fact that, based on the experience gained during the validity of Decree 1182/1987, it was practical and advisable to unify the limits of the zfd with those of the zsf, since these were two jurisdictions where “actions concurrent with the same end” were carried out.

In this way, the criterion of the repealed Decree 193/1982 was again implemented, which unified the variables of development and security in the same territorial space of the frontier, except for the territorial portions of the frontiers of Santa Cruz, Chubut, and Río Negro that were adjacent to the territorial sea, which were now excluded from the regulations of sustainable development, to be governed henceforth exclusively by the provisions of the zsf.

Concerning the operation of the police control of settlement established in Article 4 of Decree 15385/1944, Decree 887/1994 again ratified in its Article 6 the power to exclude from its control specific urban centers located in the zsf, as had been initially established in Decree 193/1982. Consequently, this new frontier regulation in its annexes expressly exempted from the zsf the “urban ejidos” of the cities of Posadas and Formosa.

The Integrated Frontier Variable

The progress in the processes of regionalization and integration that had been taking place in South America, and above all in the Argentine legal system, accentuated the need to lessen, exempt, and exclude bureaucracy from the police control of the zsf. It is worth mentioning that Decree 2336/1978 (amending the regulations of Law 18575) was already accompanied by an attached document entitled “Directive for the Implementation of the Frontier Policy”, in which one of its objectives (Item 2.2.8)

indicated the need to “promote cooperation with neighboring areas belonging to bordering countries in the form, sense, and scale that best suits the national interest and the increase of cultural and commercial relations with those countries”.

It is possible to observe in the aspirations referred to above an incipient regulatory tendency to recognize the reality and convenience of the increasingly required integration variable on the Argentine frontier, despite the validity and strict application of national defense doctrine.

Once the adverse situation of the disputed frontiers with Chile was overcome (with the consequent military and political forecasts anticipating such an eventuality), it was apparent that the Argentine frontier was not only set up as a factor of separation of sovereignties but also as an element and legal instrument of cooperation. This instrument is commonly known as the “Neighborhood Regime (or right)”, which, as Alvarez Londoño (1998, pp. 238-239) points out, brings with it a series of advantages such as access to a more flexible administrative regime for travel and requests for information, among others.¹⁹

This last regulatory dimension of the integrated frontier reached its highest point in the approval of the Treaty of Asunción, constituting the regional integration structure of the Southern Common Market (Spanish: *Mercado Común del Sur*, Mercosur), initially formed by Argentina, Brazil, Paraguay, and Uruguay.²⁰ As a result of the subscription of this international legal body, Argentina’s internal regulatory system could not be limited to regulating the limited concept of the security of its frontiers, subordinated exclusively to the national defense.

It is crucial to bear in mind that the cessation of border tensions was not exclusive to the Mercosur member states. The Republic of Chile, with which Argentina had repeated diplomatic disputes that came close to war, did not conclude this final international agreement. However, as Briones and Álvarez (2008) point out, it was progressively building relations with Argentina based on “mutual trust as the axis of regional security” in integrated control. The consolidation of democracies in the South American States inaugurated a new stage of collaboration based on mutual trust and the strengthening of mutual ties to replace the old policies of *de facto* governments. In these old policies, as Basaldúa (1999, p. 279) points out, the “mistrust of the neighboring country and the existence of strategies based on hypotheses of conflict” prevailed.

Unfortunately, the constitutional reform of 1994 only “updated” the text of the legal concept of the frontier, limiting itself to suppressing the anachronistic reference to the peaceful treatment of the Indians and their evangelization. The new paragraph 16 of Article 75 only maintained the National Congress’s responsibility limited to the variable of providing for the security of the frontier. However, in Argentine law, the dimensions of development and its integration were received at the frontiers. These regulatory dimensions were not only distorting the missions and functions of the Policía de Radicación in urban centers that were developing demographically, but they also militated against the sustainable development of the latter.

¹⁹ Other advantages pointed out in this regime by Álvarez Londoño (1998) are the free zones, the common exploitation and protection of natural resources, the creation or control of crossing points, as well as a whole source of obligations, such as the case of easements involving construction.

²⁰ Approved in Argentina by Law 23981 of August 15, 1991 and signed on March 26 of the same year.

It is often stated that frontier development and integration constitutes a process of incorporating frontiers into the heritage of each country according to its national policy, with each country having to promote coordination and standardization with those of its neighbors since border development cannot be achieved in isolation in the face of the infinite interdependencies that are configured in the respective territories (Arciniegas, 2012, p. 11). For this reason, there is a consensus in referring to frontier integration as a natural condition for development.

The Urban Exceptions of the Policía de Radicación

After sanctioning the constitutional reform of 1994 and given the increasingly distorted powers of the Policía de Radicación in different developed sectors of the ZSF, the SNF issued Resolution 113/1994; this resolution expressly appealed to the interests of national defense. Through this regulation, a “shortened procedure” was established to process applications for “Prior Agreement” of individuals and national or foreign legal entities that had obtained favorable authorization from the body above. The justification and appeal to the doctrine of national defense seem odd here since the rule was precisely aimed at simplifying the bureaucracy of the police control of settlement that had been born in the full force of that doctrine. At the end of the 20th century, this bureaucracy was undoubtedly residual and an obstacle for the development and investments in specific sectors of the ZSF, preventing a complete opening of the frontier areas to foreign trade.

The following year, some resolutions were reissued to lessen the bureaucratic delays in the requests made to obtain the authorization of the Policía de Radicación in frontier domain transfers. Of these, Resolution 206/1995 (Official Gazette of 03/30/1995, p. 9 and following), issued by the SNF, was the first ministerial regulation that tried to adapt to the variable or perspective of the frontier of integration that was being received in Argentine law, by expressly establishing a significant number of exclusions and exceptions to the operation of settlement police control in specific urban centers and localities located in the ZSF, under the power granted (and so far never exercised) by the different regulations mentioned.

The grounds for this measure emerge clearly from its recitals, which state that the operation of the Policía de Radicación in urban centers or existing localities in the ZSF should be subject to a specific regulation. The above is due to the level of development achieved in these areas, the size of national and foreign populations, and the demographic pressure from neighboring countries.

This increase in the population was reflected in the 1991 Population and Housing Census results conducted by the National Institute of Statistics and Censuses, which was cited in the law as the basis for the exclusionary measures to be adopted. Because of the above, it was rightly considered necessary to define the urban centers or localities to be excluded from the operation of the Policía de Radicación, as it was considered that there was less risk for national security and defense. The regulation in its text expressly defined the concept to be adopted to refer to an “Urban Center or Locality”:

Article 1 URBAN CENTER OR LOCALITY DEFINITION. For the operation of the Policía de Radicación, URBAN CENTER or LOCALITY is defined as

the portion of land surface characterized by the form, quantity, size, and proximity between particular fixed artificial physical objects (buildings) and by certain artificial modifications of the ground (streets), necessary to connect the former between them and endowed with a stable population.

The numerous territories that were unencumbered in their entirety from the regime per the prerogative conferred on the SNF by Article 6 of Decree 887/1994 (regardless of the nationality of the petitioner and his or her status as an individual or legal entity) were expressly detailed in the first annex to Resolution 206/1995, and were classified as “Departments of Provinces”.²¹

When delving into the matter of the weakening of the Policía de Radicación, the consequent resolution of the SNF (number 207/1995) established a “shortened procedure” for the previous acceptance of real estate acquisitions, exploitation of permits, and concessions in the *security zone*, whose details as well as their successive regulations are too extensive to be discussed in the present work. Such procedure was extended to Argentine legal entities, foreign legal entities, and foreign individuals who carried out legal acts in urban centers not exempted from the Policía de Radicación in Resolution 206/95 of the SNF, which is under the control of the CNZS.

The Policía de Radicación in the Area of Internal Security

Considering that the stage of the hypothesis of military escalation due to border questions has been practically overcome, as well as a mistrust that had not entirely disappeared toward the Argentine armed forces (given the repeated denunciations of human rights violations in the de facto governments), a trend was accentuated that led to a progressive and drastic cut in the budget for equipment and training of the armed forces. This new reality undoubtedly influenced the creation of a regulation on frontier security that attempted to dispense with the remnants of the classic guidelines of national defense doctrine.

This frontier regulatory context in Argentina was parallel to the new geopolitical context and situation in Europe. The end of the Cold War diluted in the old continent the hypothesis of a military escalation followed by a nuclear confrontation, considering

²¹ The annex lists the “Departments” that are free from the Policía de Radicación among the following fourteen provinces of Argentina: in Entre Ríos those of the Ibicuy Islands; Gualeguaychu; Uruguay, Colón; Concordia; and Federación. In Corrientes, those of Itatí; Beron de Astrada; San Cosme; San Miguel; General Paz; San Luis del Palmar; Ituzaingo; Santo Tomé; General Alvear; San Martín; Paso de los Libres; Mercedes; Curuzú Cuatía; and Monte Caseros. In Misiones those of Capital; Cainguas; Candelaria; Leandro N. Alem; Oberá; Apóstoles; Concepción; San Ignacio; San Javier; and San Pedro. In Chaco those of Bermejo and General San Martín. In Formosa those of Pirane; Bermejo; Matacos; Patiño; and Ramón Lista. In Salta those of General San Martín; Orán; Iruya; Santa Victoria; Rivadavia; and Los Andes. In Jujuy those of Susques; Rinconada; Cochinoca; Humahuaca; and Santa Catalina. In Catamarca, those of Antofagasta de la Sierra; Belén; and Tinogasta. In La Rioja, those of General Lamadrid; Vinchina or General Sarmiento; General Lavalle or Colonel F. Varela; Famatina; San Blas de los Sauces and Chilecito. In San Juan those of Calingasta; Iglesias; and Jachal. In Mendoza, those of Tunuyán; Malargüe; San Carlos; Tupungato; Luján de Cuyo; Las Heras; and San Rafael. In Neuquén, those of Aluminé; Chos Malal; Huiliches; Minas; Ñorquin; Loncopué; Pehuenches; Picunches; Zapala; and Collón Curá. In Rio Negro those of Ñorquinco; Pilcaniyeu and San Antonio. In Chubut those of Cushamen; Futaleufu; Languiñeo; Tehuelches; Rio Senguer; Rawson; Florentino Ameghino; and Gaiman.

that the threats in the borders no longer came from possible invasions by other States but the permanent action of non-state actors. Such a scenario gradually made the European Union States reconsider the risks that were associated with the links between international migration and organized crime, thus producing a more extensive conception of security which, as Ferrero Turrión and López Sala (2012, p. 231) indicate, is entirely beyond the classic notion of frontier security.

These new perspectives and policies on frontier security were reflected in Argentina through the issuance of Decree 483/1996 (Official Gazette of 05/07/1996, p. 4) by which the SNF was dissolved, arguing within the framework of a disputed policy and technical regulation that the multiple functions of the frontier were subsumed into that of other agencies.²² Subsequently, Decree 1409/96 reinforced this new concept by ordering the transfer of the functions of the former SNF of the Ministry of Defense to the orbit of the Secretariat of Internal Security under the Ministry of the Interior.

The detailed analysis of the frontier policy implied by the transfer of security functions from the Ministry of Defense to the Ministry of the Interior in 1996, based on the advance of transnational crime and the suppression of frontier warfare hypotheses, is far from the objectives of this research. For this work, it is only possible to point out that the resolution powers for the procedures of prior agreement in the operation of the Policía de Radicación were left to the officials designated by the Secretary of Internal Security under Resolution 216/1997 (Official Gazette of 02/25/1997, pp. 2-3) of the CNZS.

A decade after the transfer of the Policía de Radicación from the control of the Ministry of Defense to the orbit of the Ministry of the Interior, the latter dictated Resolution 166/2009 (Official Gazette of 03/05/2009, pp. 3-12) approving new directives for the “Operation of the Policía de Radicación in Frontier Security Zones” to overrule resolutions 206, 207, and others of the former SNF.

Annex B of this Resolution 166/2009 published a new list of the urban centers or localities entirely free from the system, with the prior consent of the Policía de Radicación, regardless of the nationality of the petitioner and his or her character as an individual or legal entity. Unfortunately, the updated list of exempted territories did not mean a new advance in the limitation of the scope of control of the Policía de Radicación, because the urban centers or localities listed in this new annex, except for the addition of the department of Biedma for the province of Chubut, were the same as those listed in the list of repealed Resolution 206-SNF-1995.

The following year the Ministry of the Interior issued a new amendment to Resolution 434/10 (Official Gazette of 05/27/2010, pp. 21-25), replacing Article 16 of the directive for the “Operation of the Policía de Radicación in Frontier Security Zones”:

Article 16. Foreign Individuals and Legal Entities and naturalized Argentine citizens with less than FIVE (5) years from the date of their naturalization, who intend to acquire real estate located in Urban Centers or Locations not included in Annex B of this Resolution, and the total area of which does not

²² It is understood that this law confuses the multifunctional character of the legal concept of the frontier with its inevitable inter-ministerial nuance. Its multiple functions (transportation, tourism, health agreements, sports, and education, to name a few) should be coordinated rather than transferred to a State ministry whose purpose is far from effective frontier protection.

exceed FIVE THOUSAND SQUARE METERS (5 000 m²), provided that the purpose of the real estate does not entail a profit motive, are exempted from the Pre-Conformity Regime.

The Policía de Radicación in the Structure of the Ministry of Security

After 20 years of frontier policies and regulations under the responsibility of the Ministry of the Interior, the system entered a state of crisis due to multiple factors. Among them is the growth of the presence of transnational organized crime on the frontiers. The growing presence of this criminality that includes drug trafficking, human trafficking, smuggling, terrorism, and money laundering, among others, could not be effectively addressed by the standards of the classic doctrine of national defense or by those of internal security.²³

Faced with this situation, in 2016, the National Executive Power decided to exclude the Ministry of the Interior from the responsibility for frontier control and issued Decree 15/2016 to that effect (Official Gazette of 01/06/2016, p. 19 and following). This instrument established the “Secretariat of Frontiers” (Spanish: *Secretaría de Fronteras*, SF), which was given both the power to ensure the effective presence of the National State throughout the zsf and to establish cooperation mechanisms with neighboring countries in the field of frontier security. It was also empowered to propose the signing of agreements that were necessary for this purpose.

Within this framework of the reorganization of ministerial functions, the “Undersecretariat of Frontier Development” was created together with the SF to coordinate the joint exercise at the frontiers. However, it was differentiated from the variables of sustainable development and security and had a strategy of integrated control with neighboring state units in order to be able to face complex transnational crimes.

Two related decrees were issued in 2018. The first of them (number 174/2018) created the Under-Secretariat for Frontier Control and Surveillance with the power to deal with the execution of Decree 15385/1944. The second was number 253/2018 (Official Gazette of 03/28/2018, p. 12 and following) on “Frontier Security Zones”. The latter led to the repeal of Decree 887/1994 after almost 24 years in the force, which consolidated the transfer of frontier security powers to the Ministry of Security. Even though this new regulation modified the established limits of the zsf and the zfd, it continued to unite the security and development jurisdictions in the same geographical area. Concerning the Policía de Radicación, in its recitals, it once again maintained the original foundations of Decree 193/1982, stating that the institutional changes made it necessary to grant the Ministry of Security the power to exclude specific urban centers located in the zsf from the operation of the Policía de Radicación of Decree 15385/1944 and consecutive, and therefore established in its article 5 that

²³ Transnational criminal organizations, by their very nature, hide their plans and procedures. This contrasts with the high visibility of an eventual interstate aggression by a bordering country. To confront these criminal organizations at the frontiers, special policies are required that are not limited to the framework of internal security or national defense.

“The Ministry of Security was empowered to exclude certain urban centers located in the Frontier Security Zone from the operation of the policía de radicación established by Decree-Law No. 15. 385/44 and its amendment”.

Regarding the express exclusion of urban centers or localities from the zsf regulations (now divided into terrestrial and maritime), this decree is again brief in this regard, ratifying the municipal ejido of the cities of Posadas and Formosa and now adding the municipal ejidos of Río Gallegos, Rawson, and Ushuaia as exceptions.

Conclusion and Future Projection

The successive legal regulations that over time established different types of limitations to the scope of control of the Policía de Radicación at the Argentine frontiers—either at the level of exclusion or exception of urban areas or lessening of bureaucratic control—are the result of the dynamic and multifunctional character of the legal concept of the frontier.

It has been chronologically demonstrated how under the “dynamic and multifunctional” character of the Argentine frontiers, different variables implemented by several governments (both constitutional and de facto) converged and coexisted: the hypothesis of interstate invasions, the subsequent threats of transnational crime, the need to adopt development policies, and the implementation of joint controls with neighboring countries given the permanent transit of people and goods. These variables were carried out with greater or lesser success by competent agencies in frontier matters, with an unstable functional dependence on ministerial portfolios with different functions, such as the Ministry of Defense, the Ministry of the Interior, and the Ministry of Security.

It is not a minor detail that until this research, except for the sanctioning of a law in 1951 on unauthorized border crossings, the National Congress has not discussed nor sanctioned a National Frontier Law that takes into account and harmonizes the interests of Argentina on its frontier areas. This would undoubtedly have imposed some order on the scattered regulations issued on the matter since the mid-20th century.

Given the time that has elapsed since the creation of the Policía de Radicación, it is worth asking if its real estate control, conceived in a geopolitical stage of belligerence and mutual distrust between States, could remain in force given the new conceptions of development, integration, and cooperation between the bordering countries of the region. The different limitations to the scope of this concept were a consequence of the different realities and needs of frontier towns, in which the real estate police control ended up being seen as an anachronistic figure, which made its economic development difficult.

The frontiers in South America, conceived initially as areas of hostility, are now regions of rapprochement and economic and cultural cooperation with few exceptions. Even though, as De Meira Mattos points out (De Meira Mattos, 1997, p. 48), the concept has been consolidated that it is not only necessary to monitor the frontiers but also to populate them and harmonize the interests of neighboring populations, it cannot be overlooked that the growing presence of transnational organized crime on the

frontiers forces the State to continue to exercise some control or criminal intelligence over the ownership or possession of a property located on its territorial periphery.

To this context of the presence of transnational crime is added the circumstance of cross-frontier health threats, such as the COVID-19 pandemic, which produced a temporary worldwide decrease in the permeability of frontiers. The Republic of Argentina was no stranger to this global health crisis that produced the temporary closure of its frontiers (Emergency Decrees 274/2020 and 313/2020). This permeability was to the detriment (at least temporarily) of the sustainability of the sustainable development variable in the frontier localities whose situation is close to precariousness and underdevelopment.

For all the above reasons, the conclusion is that after more than seven decades since the creation of the Policía de Radicación in the frontiers of Argentina, it is necessary to reflect, given the new geopolitical scenario, on the validity, scope, or updating of this legal concept in the years to come.

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Gabriel Alejandro Preci

Argentine. Ph.D. in Legal Sciences from the Pontificia Universidad Católica, Argentina. Member of the Research IUS 2019-2021 UCA (PIP 800 201901 00003 CT) of the Pontificia Universidad Católica Argentina. Full Member of INHIDE (Instituto de Investigaciones de la Historia del Derecho). Research line: historical and legal aspects of frontiers. Last publication: Preci, G. A. (2019). La frontera marítima en el ordenamiento jurídico argentino. *Prudentia Iuris*, (87), 133-170.